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No. 05-1382 & No. 05-380

In The
Supreme Court of the United States

ALBERTO R. GONZALES, ATTORNEY GENERAL,

Petitioner,

v.

PLANNED PARENTHOOD FEDERATION OF AMERICA, INC., *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

ALBERTO R. GONZALES, ATTORNEY GENERAL,

Petitioner,

v.

LEROY CARHART, M.D., *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF THE INSTITUTE FOR REPRODUCTIVE HEALTH ACCESS AND FIFTY-TWO CLINICS AND ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS IN *GONZALES V. PLANNED PARENTHOOD FEDERATION OF AMERICA, ET AL.*, NO. 05-1382, AND MOTION FOR LEAVE TO FILE BRIEF OUT OF TIME IN SUPPORT OF RESPONDENTS IN *GONZALES V. CARHART, ET AL.*, NO. 05-380

Dated: September 20, 2006

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MOTION FOR LEAVE TO FILE OUT OF TIME BRIEF *AMICI CURIAE* IN SUPPORT OF RESPONDENTS IN RELATED CASE, *GONZALES V. CARHART, ET AL.*

The Institute for Reproductive Health Access and fifty-two additional clinics and organizations (*see* Appendix) that work with and/or on behalf of women seeking second-trimester abortions, respectfully move this Court to grant them leave to file the attached brief as *amici curiae* in *Gonzales v. Carhart, et al.*, No. 05-380.

All of the parties have consented to the filing of the attached brief in support of the Respondents in both *Gonzales v. Planned Parenthood Federation of America, et al.*, 05-1382, and *Gonzales v. Carhart, et al.*, 05-380. Those letters of consent have been submitted to this Court.

The above-captioned case and *Gonzales v. Carhart* are related, and both raise identical constitutional issues regarding the Federal Abortion Ban. *See* Partial-Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, 117 Stat. 1201 (codified at 18 U.S.C. § 1531). Both cases are scheduled to be heard by the Court on the same day, and the parties in both cases have all consented to the participation of *amicus curiae* in the *Gonzales v. Carhart* case.

Amici curiae were originally scheduled to file the attached brief in support of Respondents in both cases on August 10, 2006. *Amici curiae* were advised that the Clerk's Office of this Court, however, would consider briefs to be timely filed in both cases if submitted by the date of filing in *Gonzales v. Planned Parenthood Federation of America*. *See* Exh. A. *Amici curiae* relied upon the Clerk's Office statement, and did not file its brief on August 10, 2006. It is our understanding that the Clerk's Office has

subsequently advised that leave of this Court will be required in order for the attached brief to be considered timely in *Carhart*.

Petitioner will not be prejudiced by this Court granting leave to *amici curiae* in *Carhart*, and the information and arguments presented in the brief submitted by *amici curiae* are equally relevant to both cases.

Accordingly, *amici curiae* request that the Court grant them leave to file a jointly-captioned brief in support of Respondents in both cases, and direct the Clerk to accept this brief out-of-time in *Gonzales v. Carhart*, No. 05-380 and to docket the brief in accord with the foregoing.

Dated: September 20, 2006

Respectfully submitted,

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**CENTER
FOR
REPRODUCTIVE
RIGHTS**

BY FACSIMILE AND OVERNIGHT MAIL

August 4, 2006

Denise McNerney
Office of the Clerk
1 First Street, N.E.
Washington, D.C. 20543

Re: *Gonzales v. Carhart*, No. 05-380

Dear Ms. McNerney,

Thank you for discussing the briefing schedule for amici in the above-captioned case. This is to confirm that, as we discussed, amici filing in support of Respondents in *Gonzales v. Carhart*, No. 05-380, may file their briefs on the date that amicus briefs are due in support of Respondents in *Gonzales v. Planned Parenthood Federation of America Inc.*, No. 05-1382 under the captions for both cases.

Sincerely,

/s/ Priscilla J. Smith
Counsel for Respondents

cc: Eve Gartner
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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are fifty-three clinics and organizations that work with and/or on behalf of women seeking second-trimester abortions. This Brief is submitted to provide the Court with accounts of individual women who obtained abortions in their second-trimester of pregnancy. As organizations that hear first-hand about the impact abortion has in women's lives, *Amici* have an interest in the future of access to second-trimester abortions threatened by the Federal Abortion Ban. Individual *Amici* statements of interest are contained in the Appendix to this Brief. *See* Appendix.

SUMMARY OF ARGUMENT

Abortion is one of the most intimate and personal acts subject to consideration by Congress and this Court. In the more than thirty years since *Roe v. Wade*, 410 U.S. 113 (1973), the reasons individual women seek abortions in the second trimester have been overshadowed by the politics and rhetoric of "pro-choice" and "pro-life." It is essential therefore for this Court to consider the individual women whose lives and liberty may be impacted by a ban on any – let alone all – safe second-trimester abortion procedures.

In this Brief, *Amici* excerpt testimonials from over 150 women who shared their stories of second-trimester abortions. The women hail from across the country, and

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[1] Counsel drafted this Brief with the advice and consent of *Amici*, and all of the parties have consented to the filing of this Brief in *Gonzales v. Planned Parenthood Federation of America, et al.*, No. 05-1382 and *Gonzales v. Carhart, et al.*, No. 05-380. Consistent with Supreme Court Rule 37.6, this Brief was not authored in whole or in part by counsel for any party. No person, other than *Amici* or their counsel, has made a monetary contribution for the preparation or submission of this Brief.

they are from diverse racial, religious and socio-economic backgrounds. Their experiences are remarkably similar, however, and reveal that individual women find themselves facing second-trimester abortions primarily when: (1) they are carrying wanted pregnancies in which the fetus is diagnosed with grave anomalies; (2) their own health becomes endangered by their pregnancy; or (3) they have been unable to access care because of financial, geographic, or other delays. Their stories also demonstrate that, in each of these circumstances, women consistently consider abortion for moral reasons that are fundamental to their religious, personal, and family values.

ARGUMENT

I. *Amici* Collected Accounts of More than 150 Women Who Had Second-Trimester Abortions.

The Federal Abortion Ban prohibits at least one safe second-trimester abortion procedure[2] with no exception to preserve a woman's health.[3] *See* Partial-Birth Abortion Ban Act of 2003, Pub. L. No. 108-105, 117 Stat. 1201

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[2] The second trimester of pregnancy is generally regarded as beginning at twelve to fourteen weeks, determined as a function of gestational age or "last menstrual period" dating. *See, e.g., Stenberg v. Carhart*, 530 U.S. 914, 923 (2000).

[3] The Attorney General acknowledges that the Federal Abortion Ban prohibits the "dilation and extraction" method of abortion. *See, e.g.*, Br. of Pet'r at 2-3; 18 U.S.C. § 1531, Pub. L. No. 108-105 (2003) (Congressional findings). There are three primary methods of abortions in the second trimester: dilation and evacuation (D&E); dilation and extraction (D&X); and induction. *See Carhart v. Gonzales*, 413 F.3d 791, 793-94 (8th Cir. 2005). D&X is a variant of the D&E procedure and the terms "dilation and extraction," "D&X" and "intact D&E" are used interchangeably. *Stenberg*, 530 U.S. at 928 (2000). Ninety-five percent of second-trimester abortions are performed before 20 weeks' gestation and prior to fetal viability, notwithstanding that they are sometimes deemed "late term." *See Stenberg*, 530 U.S. at 924.

(codified at 18 U.S.C. § 1531) (hereinafter the "Federal Abortion Ban" or "Ban"); *see also Planned Parenthood Fed'n of America, Inc. v. Gonzales*, 435 F.3d 1163 (9th Cir. 2006); *Carhart v. Gonzales*, 413 F.3d 791 (8th Cir. 2005). In attempting to proscribe second-trimester abortions, Congress and the Attorney General focus on the Government's interest in legislating the morality of abortion without any meaningful regard to the concerns of the individual women who seek those procedures.

In this Brief, *Amici* present the stories of women who have had second-trimester abortions.[4] Excerpted below are testimonials culled from more than 150 interviews, letters, and e-mails provided by women specifically to support the right to safe second-trimester abortion threatened by the Federal Abortion Ban. In order to find women willing to tell their stories, The Institute for Reproductive Health Access (the "Institute") contacted abortion clinics across the country and provided them with fliers to distribute to women. The fliers advised women they could send an e-mail or telephone a toll-free number to tell their stories about second-trimester abortions.

Abortion clinics across the country also permitted the Institute, as well as attorneys from the domestic offices of Orrick, Herrington & Sutcliffe LLP ("Orrick"), to conduct on-site interviews of women willing to tell their stories for this *Amicus* Brief. Women were also advised they could submit their stories by letter.[5]

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[4] The majority of the women who came forward to share their experiences had second-trimester abortions in the last six months and during the pendency of the underlying litigation in this case. Several women submitted stories of abortions performed more than ten years ago and we have noted those stories when cited.

[5] In addition to canvassing the country to find women willing to come forward to tell their stories for this Brief, the Institute approached groups that routinely gather women's accounts of why they obtain

(Continued on following page)

It is not easy for women to come forward and speak about their personal reasons for obtaining second-trimester abortions, let alone to share their stories in support of a public filing. Indeed, this Court has long recognized that women may be deterred from asserting their rights if they are required to make their abortion decisions public. Accordingly, the Court has permitted women to proceed as plaintiffs using pseudonyms, *see, e.g., Roe v. Wade*, 410 U.S. at 124; *Doe v. Bolton*, 410 U.S. 179, 187 (1973), and has held that physicians have standing to assert the interests of their patients, in part, because a woman may be deterred from asserting her own rights "by a desire to protect the very privacy of her decision from the publicity of a court suit." *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (opinion of Blackmun, J.).

To ensure the privacy and safety of the individual women who submitted stories, we refer to them herein by first name only, although many authorized us to use their full names. For those women who requested we not use their real names, we identify them solely as "Jane Doe," and when possible we describe the regions of the country from which women shared their stories.

The testimonials collected for this Brief are not sworn testimony or record evidence, but they are a unique source of insight into the circumstances and lives of individual women who chose to have second-trimester abortions. The Court has routinely accepted similar testimonials in the past. *See, e.g., Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 749 (1986) (referencing brief filed by NARAL); *see*

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second-trimester procedures. For example, the Institute approached organizations that provide funds to women who cannot afford to pay for abortion services. A number of funds shared their collected stories, provided counsel did not use any identifying information about the individual women, and we have honored that request.

also Harris v. U.S., 536 U.S. 545, 568 (2002) (citing *amicus* brief excerpting letters from sentencing judges). The women did not receive any remuneration for sharing their stories, and all of the letters, e-mails, and taped interviews collected for this Brief are on file in Orrick's New York office.[6]

It is worth noting that no individual woman's story is repeated in the Brief; each woman is quoted only once. Moreover, although the Institute received a significant number of testimonials, each story is in itself significant. Each woman's story demonstrates how the right to abortion is singularly fundamental to the personal liberty of each and every woman who chooses to exercise it.

II. Women Seek Second-Trimester Abortions For Three Primary Reasons.

At current rates, one in three American women will have an abortion by age 45.[7] The majority of induced abortions in this country take place in the first trimester of pregnancy; nevertheless second-trimester abortions are not uncommon.[8]

Women who have second-trimester abortions are from different races, backgrounds, geographic regions, and

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[6] The women's submissions have been compiled into two bound volumes also on file with Orrick, and it is to these volumes that the citations below refer.

[7] *See* Stanley K. Henshaw, *Unintended Pregnancy in the U.S.*, FAM. PLAN. PERSP., Jan.-Feb. 1998, at 28.

[8] In 2002 the Centers for Disease Control and Prevention (CDC) estimated that 87% of abortions were performed during the first trimester. *See* Lilo T. Strauss, *et al.*, *Abortion Surveillance: U.S. 2002*, MORBIDITY & MORTALITY WKLY. REP., Nov. 2005, at 1-31, *avail. at* www.cdc.gov/mmwr/preview/mmwrhtml/ss5407a1.htm. Between 9-10% of abortions from 1990 to 2001 took place in the second trimester. *See* U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE U.S. (123d ed. 2004), *avail. at* www.census.gov/compendia/statab/vital_statistics/family_planning_abortions/.

religious faiths.[9] Of the women who provided accounts, approximately 30 percent obtained second-trimester procedures after their pregnancies were diagnosed with severe fetal anomalies. Less than five percent obtained procedures when their own health became imperiled by their pregnancies; and approximately 55 percent obtained second-trimester procedures for other reasons primarily because of delayed access to abortion services due to financial or geographic obstacles. As noted below, at least two of the women obtained abortions performed using the "dilation and extraction" method – the procedure Congress seeks to ban outright under the Federal Abortion Ban. *See, e.g.*, Br. of Pet'r at 2-3; 18 U.S.C. § 1531 (Congressional findings).[10]

A. Wanted Fetuses Diagnosed with Grave Anomalies in the Second Trimester.

One of the tragic realities of second-trimester abortions is that many women who obtain them are carrying pregnancies that were entirely wanted. As many of the women note, tests to assess whether certain grave conditions or disorders affect a pregnancy cannot be administered prior to the second trimester.[11] As a result, a woman whose fetus is critically

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[9] In their accounts, individual women self-identified as Baptist, Catholic, "conservative Christian," Jehovah's Witnesses, Jewish, Muslim, Presbyterian, atheist, and "spiritual." Individual women identified as members of different racial and ethnic groups, including African-American, Asian-American, Caucasian, and Latina. The women who submitted their stories are from more than half of the States, including, *inter alia*, Alaska, Arizona, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Louisiana, Maryland, New York, New Jersey, Ohio, Oregon, Pennsylvania, Virginia, and Washington.

[10] While two of the women's stories make clear they obtained D&X procedures, some of the women's testimonials refer alternatively to having obtained a D&E and a D&X procedure, suggesting that more than two of the women who submitted stories may have obtained a D&X procedure.

[11] Amniocentesis is the most common and accurate prenatal test used to diagnose serious birth defects. It is generally not available before the

(Continued on following page)

impaired will often not learn that fact until well into the second trimester of her pregnancy. Often women learn, only for the first time in the second-trimester, of mortally serious conditions and disorders such as Trisomy 18 or Patau's syndrome;[12] Trisomy 18 or Edward's syndrome;[13] Cat Eye syndrome or chromosome 22 disorder;[14] congenital CMV;[15] or Turner Syndrome.[16]

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fifteentn week of pregnancy. "Chorionic villus sampling," or CVS, is a test available starting at ten to thirteen weeks in pregnancy but is useful to identify a limited subset of abnormalities identifiable by amniocentesis. *See* F. GARY CUNNINGHAM, *ET AL.*, WILLIAMS OBSTETRICS 329-30 (22d ed. 2005).

[12] Median survival rate for infants born with Trisomy 13 is seven days. Only 10% of infants with the chromosomal disorder will celebrate their first birthday. Eighty to 90% of infants with Trisomy 13 will suffer from cardiac defects, and 70% will suffer from a spectrum of significant cranio-facial malformations. *See* WILLIAMS, *supra* n.11, at 291; *see also* Support for the Trisomy 13, and Related Disorders, Trisomy 13 Facts, www.trisomy.org/html/trisomy_13_facts.htm (visited Aug. 9, 2006).

[13] Most infants born with Trisomy 18 die within fourteen days of birth and only 10% survive more than one year. Those who survive are profoundly retarded and 95% have cardiac defects. WILLIAMS, *supra* n.11, at 290; *see also* Support for the Trisomy 18, and Related Disorders, Trisomy 18 Facts, www.trisomy.org/html/trisomy_18_facts.htm (visited Aug. 9, 2006).

[14] Cat Eye syndrome typically results in the grotesque malformation of a fetus's skull and facial features. Additional conditions associated with the chromosomal disorder include malformations of the heart, kidneys, and intestinal and anal systems. *See* Nat'l Inst. of Health, Nat'l Library of Med., *avail. at* www.nlm.nih.gov/cgi/jablonski/syndrome_cgi?index=93 (visited Aug. 9, 2006); *see also* Nat'l Org. for Rare Disorders, Cat Eye Syndrome, *avail. at* www.rarediseases.org/search/rdb detail_abstract.html (visited Aug. 9, 2006).

[15] In 90% of infants born that show no symptoms of CMV at birth, 15% will develop one or more neurological abnormalities, usually in the first two years of life. Of the 10% that show symptoms at birth, up to 20% will die and about 90% of the survivors suffer from serious neurological defects. *See* WILLIAMS, *supra* n.11, at 1282-84; *see also* March of Dimes, Cytomegalovirus Infection in Pregnancy, *avail. at* www.marchofdimes.com/professionals/681_1195.asp (visited Aug. 9, 2006).

[16] The majority of fetuses with Turner Syndrome that survive until the second trimester have major cardiac malformations. It is also common for these fetuses to have "cystic hygromas" or sacs of fluid that

(Continued on following page)

As the women describe, not only are some of the initial diagnostic tests administered only in the second trimester, but confirmatory tests – essential to the woman making an informed decision – take additional time.

Erin, a 35-year-old woman from the West Coast, describes her life as "pretty 'apple pie'." She explained the timing involved in receiving a diagnosis for her pregnancy:

> In addition to the terrible news about the probability of the baby having a serious problem came another nasty surprise: We would not be able to confirm if there was a problem or make any decision about how to proceed for quite some time. . . .
>
> Waiting to get the amnio was one of the most stressful, heart-rending, agonizing times of my life. My belly was growing, and my pregnancy was no longer a private matter because of that. I wanted to be upbeat, but I was terrified. The more research I did on Trisomy 13 and 18, the more terrified I got. . . .
>
> The amnio date finally arrived in the middle of my 15th week of pregnancy. During the amnio, they discovered that I also had a complete placenta previa – a condition where the placenta implants over the cervix. They felt my case was unlikely to resolve itself, which meant I would be at risk for severe bleeding as the pregnancy progressed. . . . [W]e tried to remain hopeful that the amnio results would show that the baby at least didn't have a fatal trisomy. . . . But unfortunately, the amnio results came back confirming our baby

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form from the neck and may be the size of or larger than the fetal head. WILLIAMS, *supra* n.11, at 395. Less than 2% of fetuses with Turner Syndrome survive pregnancy. *See id.* at 291. Of those infants who survive, 98% will be infertile and some will have heart, kidney, and neurological problems. *See also* Nat'l Inst. of Health, Turner Unit, *avail. at* http://turners.nichd.nih.gov/ClinFrTables.html (visited Aug. 9, 2006).

> had trisomy 18. At this point I was 16 weeks along and had begun feeling the baby kick. It should have been sweet, but instead the kicks were torture. We were utterly crushed.

Erin, submitted by e-mail, May 11, 2006, at 62-63.

Cara, a married Catholic woman with an almost-three-year-old son, has "always dreamed of having a big family." She described the time it took to obtain information needed about her pregnancy:

> I was about 17 weeks pregnant at the time. . . . [T]hey scheduled us for our Level II ultrasound a few weeks early so they could look in more detail at the baby. . . .
>
> A few days [after the ultrasound], we received the news that would change our lives forever. Our son was infected with CMV (cytomegalovirus). This was the worst possible scenario (of the possibilities we were given). . . .
>
> Although I have always been pro-choice, I had winced at the thought of late-term abortions or "partial birth" abortions, thinking that it was just inhumane or irresponsible. Now I know differently. In my case, we were not able to confirm our diagnosis until 19 or 20 weeks gestation. I terminated at 22 weeks. . . . I was completely heartbroken. . . .

Cara, submitted by e-mail, May 11, 2006, at 42-43.[17]

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[17] Some of the women who submitted stories identify as "pro-choice," while others continue to identify as "pro-life." *See, e.g.*, Jane Doe, on-site clinic interview, June 23, 2006, at 292 ("I was pro-choice and I just felt that America as a democracy should give people the right to choose"); Jocelyn, telephone interview, May 25, 2006, at 168 ("I'm always pro-life," explaining decision to terminate pregnancy with severe fetal anomalies); *see also* Sara, submitted by letter, May 12, 2006, at 5 ("I once was against abortion until it came to the future of the family I already have.").

Carrie, a 40-year-old woman from the Southwest who was happily married for nine years when she became pregnant described the timing of her genetic testing and decision to end her pregnancy:

> On November 11, 2005, I elected to have [a] CVS test.... Then, the test results came in.... We knew chromosome 14 was incompatible with life, and chromosome 22 could mean Cat Eye Syndrome. Both my husband and I wanted the baby very much, and neither one of us was willing to terminate the pregnancy on a "maybe." ...
>
> I had the amnio on 12/26/05, and the results came in on Jan. 13, 2006. It confirmed without doubt – she had Cat Eye Syndrome tetrasomy in every cell of her body. The last 3 sonograms showed ... our baby's kidneys were beginning to malfunction....
>
> We made this decision because we loved our daughter so much. We didn't want her to suffer the definite and the untold problems she was sure to endure, if she even made it. We made the best decision we could with the information we had. We fought for her. We wanted her. But we didn't want to condem[n] her to [a] life of agony.

Carrie, submitted by e-mail, May 30, 2006, at 111-13.

Beyond the time it takes to obtain a diagnosis, there is the time it takes to decide what to do when the diagnosis is devastating. Heather, a 33-year-old woman from the Midwest, explained:

> It took me an agonizing week to make this heartbreaking choice, but in the end I know it was the best decision for me, my family and most importantly, our child. We lost our oldest son at 6 years and 10 months old, to complications from having a rare type of dwarfism. That dwarfism was exactly the reason why we had the CVS test

> done. We knew without a doubt that we could never in good conscience bring another child into this world with that disease. . . . Most genetic defects come with their own list of extra problems, which I didn't take into account, and put that child at risk for painful procedures and even death. No child deserves to come into a world of pain. That is what made my decision for me. . . .

Heather, submitted by e-mail, May 17, 2006, at 65-66.

Women repeatedly state that one of the main reasons they choose to terminate wanted pregnancies is that the information they learn in the second-trimester confirms, if the fetus were to survive, its life would be short and fraught with pain. One 37-year-old married woman and mother of a three-year-old daughter, explained:

> So all the fluid was shown on the brain [and] stomach and [the physician] believed the baby had a very severe case of heart defect. And most likely – 90% chance that he was going to die in utero. . . . And even the 10% that he was going to be born he wasn't going to live very far without, I mean, even with major interventions it was very unlikely that he was going to survive. . . . [S]o at the time, we made a decision to terminate because I couldn't – knowing the outcome of what was going to happen I just couldn't carry on. I mean why put the baby through suffering if I can end his life and set him free of his suffering that he had to endure. That was our thinking.

Jane Doe, telephone interview, May 10, 2006, at 123.

Another woman and her husband learned at 18-20 weeks ("depending on which sonogram was right") that their pregnancy had Turner Syndrome. They too decided to abort to spare their child's suffering:

> Apparently, the lymph nodes didn't seal off, and the body was filled with fluid. This fluid was pushing on all the organs, and restricting the growth of the heart and lungs. . . . She was drowning from the inside, and I was able to save her from that immeasurable pain.

Jane Doe, submitted by e-mail, May 9, 2006, at 78-79.

Kara, a married woman with a three-year-old daughter from the Mid-Atlantic, learned at 25 weeks that her fetus was "missing a chamber of her heart which was causing a back flow of blood into another chamber and good and toxic blood were mixing":

> The physician . . . said if everything goes perfectly, [the child] will have to undergo 3 open heart surgeries and still will not have a long life expectancy. She couldn't tell us how long she would survive. She said "it could be a year, maybe three, maybe ten. That is, if she survives the pregnancy to term, the C-section, and all the surgeries." After the surgeries, she would be plagued with heart infections and would be constantly monitored at the hospital. If we were lucky and she did survive long enough to walk, she would never be able to run and play with her sister. . . .
>
> This is not the life we wanted for our precious little girl. Not only would she suffer her entire existence but it would have emotionally destroyed our other little girl as well.

Kara, submitted by e-mail, May 17, 2006, at 115-16.

Jane Doe, a 21-year-old woman from the Northeast, decided to end her pregnancy after her fetus was diagnosed with Turner Syndrome:

> [I]t was my first pregnancy so I went to the doctor and they found out [it] had Turner Syndrome and they told me my options and . . . they were

> surprised that she lived as long as she – her legs – she was swollen, one side of her body was swollen and she had a tumor around her neck and there wasn't enough fluid. . . . I made up my mind to have the procedure done 'cause I didn't know if she was suffering, 'cause she didn't have enough fluid, so I didn't know if she was ill. Nobody knew. They couldn't tell me so I feel like I had to do . . . what was best for her and that's what I thought was best for her. . . . I know like I did it for a good reason but it's like I don't regret it, but it's still hard. Because I really wanted my child. . . . Me personally I would [have] never thought I would have to get an abortion because no matter how young, if I was 15 and I got pregnant I would you know and everything was okay. Even if my child had Down Syndrome I would've had my child. But knowing that my child is swollen and there's not enough fluid and they don't know . . . if there's something wrong with her like if she suffers. . . .

Jane Doe, telephone interview, May 5, 2006, at 134-35.

B. Pregnancy Imperils Women's Health in the Second Trimester.

Another reason women decide to have a second-trimester abortion is because their pregnancies imperil their own health. Again, because these pregnancies are wanted, these women will often wait until the last possible moment to have an abortion, hoping to carry the fetus to term. Melissa, a 33-year-old nurse, described her situation:

> I have Lupus. The first 12 weeks or so were pretty normal. Then I was put on bed rest. . . . I had discharge, cramping. . . .

> I was real sick – with the disease and complications. Practically every complication that I could have – pre-term labor, starting first trimester, cramping, shortening of the cervix all the way through. . . .
>
> I was put on bed rest for another week and told to drink fluids constantly but then I started hemorrhaging. . . . They put me on bed rest in the hospital, upside down, with daily ultrasound and IV calming medicine but my fluid kept getting lower. About 5 days later, the doctor said I had to make a decision. . . . The baby was not viable. The doctor said the baby could not survive without fluid. I begged for another day. This was a Catholic medical center. . . . The doctor said I'd have to go elsewhere to terminate. I was in a slight Lupus flare-up. . . .
>
> They wouldn't transfer me to another hospital. They wouldn't make any arrangements. . . .
>
> I made the arrangements myself. I called [the local clinic] and was blessed to speak [to the counselor there].

Melissa, telephone interview, May 26, 2006, at 162-64.

Sara learned during her wanted pregnancy that it was, in fact, a molar pregnancy.[18] Notwithstanding this tragic diagnosis, she tried to continue with the pregnancy:

> I had early onset preeclampsia.[19] . . . My blood pressure which is usually around 110 over 70

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[18] Molar pregnancies are non-viable 100% of the time whether "complete," in which case no fetus is formed (although the placenta may develop), or "partial," in which case the fetus has serious abnormalities. Treatment for molar pregnancy is the removal of the pregnancy. *See* WILLIAMS, *supra* n.11, at 274-78.

[19] Preeclampsia is a rapidly progressive condition where a woman's blood pressure becomes seriously elevated and she develops large

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> was floating around 220 over 135. And all the attendant problems – the kidneys, the water retention were a nightmare. . . . And there was great risk of stroke or seizure associated with the blood pressure. . . . And I also had the placenta previa – the placenta blocking the birth canal – and the placenta was also abnormally massive so even if my body had tried to spontaneously end the pregnancy it would have created a different set of problems with me. If that placenta was ruptured there was a great chance that I would have massive hemorrhaging or – so we didn't have many options. And the preeclampsia was just gonna get worse. . . . My child was dying and I was really sick. . . . Eventually they . . . gave me the option to do D and E, dilation and extraction. . . . [W]e did the D&E later that afternoon.

Sara, telephone interview, June 16, 2006, at 150, 152-53.

Jane Doe, a 19-year-old from the Midwest, has PKU disorder[20] and describes:

> My PHE levels are too high to bring a child in this world [a]nd not expect to have some medical problems. My child is almost guaranteed to be

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amounts of protein in her urine. It typically occurs after 20 weeks' gestation. Treatment is the removal of the fetus. *See id.* at 763, 787-88, 797; *see also* Nat'l Inst. of Health, Nat'l Library of Med., *avail. at* www.nlm.nih.gov/medlineplus/ency/article/000898.htm (visited Aug. 9, 2006).

[20] Phenylketonuria (PKU) results from an enzyme deficiency that, untreated, leads to elevated levels of the amino acid phenylalanine (Phe) in the bloodstream. Fetuses exposed to high levels of Phe are vulnerable to mental retardation, congenital heart disease, and other disorders. *See* WILLIAMS, *supra* n.11, at 192, 296-97; *see also* Nat'l Inst. of Health, Press Release, NIH Consensus Panel Recommends Comprehensive Approach to Life Long Care for PKU (Oct. 18. 2000), *avail. at* www.nih.gov/news/pr/oct2000/omar-18.htm (visited Aug. 9, 2006).

> born and live only 2 or 3 years or be born and have mental retardation, [h]eart defects, and a very small head. I can't be selfish like that and have this child under the circumstances.

Jane Doe, submitted by abortion fund, Feb. 1, 2006, at 350.

Women also have second-trimester abortions to preserve their ability to have healthy children in the future. Amanda is a 27-year-old woman from the Northeast who lives with her boyfriend and their four-year-old son. She decided to have an abortion after learning that her pregnancy had a cystic hygroma caused by Turner Syndrome:

> Unfortunately it was quickly made clear that it was too dangerous to continue my pregnancy. The hygroma was too large on the baby's head. It was a guarantee that she was going to die. The only question was when. I tried to fight it. . . . If I waited and let her die naturally I would have risked my own health and possibly my ability to have any future children. . . . All possibilities ended with the same eventual outcome. My decision ended her suffering and kept us from prolonging the loss that was inevitable.

Amanda, submitted by letter, July 7, 2006, at 386-87.

Catherine and her husband of eight years live in the Midwest, and learned during the 14th week of pregnancy that their child had Trisomy 13 and that the pregnancy was threatening her health:

> [I]f I tried to carry to term and suffered a late-term fetal death or miscarriage, there was a serious chance of complications for me. I might hemmorrage [sic], I might get an infection, the trisomy might interfere with the development of the placenta and leave me deathly ill. My OB told me, in very plain language, that if I carried

> this pregnancy to term, there was a very high chance that I would never bear another child.
>
> There was no good choice. There was no hope of a healthy child. There was no hope of a living child. I could have an abortion, or I could see how my luck went with carrying this doomed pregnancy to term and risk my life and future fertility, and I elected to have an abortion.

Catherine, submitted by e-mail, May 26, 2006, at 50-51.

C. Obstacles Delay Access to Abortion.

Finally, some women find themselves in the second trimester of their pregnancies because they had problems accessing abortion services at an earlier time or because they only first became aware they were pregnant during their second trimester. Often, these women would have preferred to have abortions in the first trimester, but due to financial[21] or geographical[22] factors they were unable to do so.

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[21] The Federal Government and 33 states refuse to provide public funding for medically necessary abortions. As a result, low-income women on average delay accessing abortion an additional two to three weeks because of difficulties in obtaining funds. *See, e.g.*, Stanley K. Henshaw & Lynn S. Wallisch, *Medicaid Cutoff and Abortion Servs. for the Poor*, 16 FAM. PLAN. PERSP., July-Aug. 1984, at 170. This delay itself costs women money, as the average cost of an abortion increases as the gestational age of the fetus increases (along with the relative complexity of the procedure). *See also* Jane Doe, on-site clinic interview, June 23, 2006, at 299 ("today would've been 16 weeks. Which would've made it 200 more dollars. Then I would've been stuck trying to get 200 more dollars by Friday and then if I didn't get it next Friday it would've jumped up another 200 dollars so that's 400 I didn't get in 2 weeks and I can't pay my electric bill. . . . Money is a major issue.").

[22] As of 2000, abortion providers operated in only three nonmetropolitan counties in the United States and 87% of counties overall had no abortion provider. *See* Lawrence B. Finer & Stanley K. Henshaw, *Abortion Incidence and Servs. in the U.S. in 2000*, PERSP. ON

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For instance, Deria, a mother of three, noted that she delayed until the second trimester because: "I was just waiting for my insurance. That was the only reason. Because I got the new job and I had to wait for my insurance to kick in." Deria, on-site clinic interview, June 3, 2006, at 207.[23]

Tamera, a single mother of two, explained: "I was trying to get the money up but the longer you wait the more it is. Then I'm Rh negative so you have to pay for the shot. And it's just more and more. It builds up to the point where – what if I didn't have it today and it was $1500 in a week? And then it was almost $2000. . . . " Tamera, on-site clinic interview, June 3, 2006, at 232.

For women who do not live close to a clinic, there are often delays as they try to arrange transportation and the necessary funds. Liz, a 20-year-old woman from the Northwest, described her efforts to find a clinic where she could access an abortion:

> Once I realized and accepted I was pregnant, I made my appointment at Planned Parenthood of Idaho and was 5 days past the deadline. I was 14 weeks. Scared but being responsible I took a seven hour bus drive to Salt Lake City and was turned away again because I was 7 days past 18 weeks (which increases by $500). I therefore had to

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SEX'L AND REPROD. HEALTH, Jan.-Feb. 2003, at 6-15. Thirty-three percent of providers offer abortion services at 20 weeks gestation and 24% provide services at 21 weeks. Stanley K. Henshaw & Lawrence B. Finer, *Accessibility of Abortion Servs. in the U.S. 2001*, PERSP. ON SEX'L AND REPROD. HEALTH, Jan.-Feb. 2003, at 18.

[23] Seventy-four percent of women pay "out-of-pocket" for abortion procedures, and four states restrict private insurers from providing coverage except in cases that would endanger a woman's life if carried to term. *See* Guttmacher Inst., *State Policies in Brief, Restricting Ins. Coverage of Abortion*, Sept. 1, 2006, at 1.

> leave. . . . I am currently at [a clinic in Oregon]. . . . I am 21 weeks and am sure of my decision.

Liz, submitted by letter, May 11, 2006, at 25.

Some women do not realize for several months that they are pregnant. Many of the women interviewed were on birth control and thus were not anticipating the possibility of pregnancy. Crystal, a 20-year-old married woman, explained:

> I had an IUD inserted in early November, and I was told that it was common for women to stop menstruating. I conceived a week after my IUD was inserted, despite using condoms as a back-up method. I wasn't even aware I was pregnant until the end of January, and even then, I only took a test out of paranoia. . . . The risks from an IUD pregnancy, coupled with our financial situation led us to make the decision for abortion. It was too soon for us to have another child. My daughter is still just an infant, and deserves all our love and attention.

Crystal, submitted by e-mail, May 15, 2006, at 59.[24]

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[24] The rights to privacy and personal liberty have long been recognized to include the right to use contraceptives. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). No contraceptive is 100% safe and effective, however, and as demonstrated in the women's stories, contraception often fails despite conscientious use. *See* AMERICAN ACAD. OF FAMILY PHYSICIANS, CHOOSING A BIRTH CONTROL METHOD THAT'S RIGHT FOR YOU 2 (2005), *avail. at* http://familydoctor.org/016.xml; *see also* Krystal, submitted by e-mail, May 5, 2006, at 76 ("I thought in my head 'I know I'm not pregnant I'm on birth control' "); Jane Doe, on-site clinic interview, June 2, 2006, at 189 ("I was on birth control. I had gotten sick and was on medication, which I found out afterwards had made my birth control less effective.").

Others were young and unfamiliar with their bodies and did not recognize the signs of pregnancy.[25] For example, one 16-year-old explained she did not realize she was pregnant:

> I just felt tired all the time. I just thought it was stress because I was like studying for my finals and everything. I guess I was like I don't feel good. Always had these headaches or something. So, I was like it's just stress, it's just stress. So I would just like run. The first time I went to the doctors and I found out . . . it was just a big shock.

Jane Doe, on-site clinic interview, June 23, 2006, at 302.[26]

Still other women experienced stressful life events that masked the source of their missed menstrual cycles. Rahel explained:

> I was unemployed and had no health insurance . . . I had no doctor, I had no gynecologist and was just trying to get a job so that I could support myself and take care of my immediate needs. So my health was very secondary. Also, because of my personal health history it was normal for me to not menstruate for extended periods of time . . . especially when . . . I'm feeling

[25] Teenagers face an additional "serious, and in some cases insurmountable barrier" to abortions in states with parental involvement laws, especially teens in rural areas. *See* Patricia Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions*, FAM. PLAN. PERSP., Nov.-Dec. 1983, at 259. One young woman, for example, delayed until she turned eighteen years old in order to have the abortion without her parents awareness. *See* Jenna, submitted by letter, June 12, 2006, at 24.

[26] Some young women delay in response to the stress of being pregnant. *See, e.g.*, Alyssa, submitted by letter, July 28, 2006, at 370-71 ("I am 15 years old and almost 18 weeks pregnant. When I found out I was pregnant I was very confused. I found out when I was about 6 weeks pregnant. I didn't go to the doctors until I was almost 13 weeks pregnant.").

> stressed. . . . So because of those factors I just wasn't aware of what had happened.

See Rahel, telephone interview, May 24, 2006, at 145.[27]

Finally, some women recounted being victims of sexual assault and either wanted to avoid the possibility or were embarrassed to tell others why they were pregnant. For example, Tina described being the victim of a rape witnessed by her seven-year-old daughter. Tina did not initially know she was pregnant, explaining, "[I don't] want to have the baby given the way it happened." *See* Tina, on-site clinic interview, May 24, 2006, at 235.[28]

III. Women Choose Second-Trimester Abortions for Moral and Intimately Personal Reasons.

Regardless of the circumstances that lead them to consider a second-trimester procedure, individual women do not choose abortion lightly.[29] For some, God and faith

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[27] Rahel's story indicates that she obtained an abortion by the D&X procedure targeted by the Ban and for which there is no health exception.

[28] *See also* Jane Doe, on-site clinic interview, June 2, 2006, at 180-81 ("He forced his way into my door into my living room and raped me on my living room floor . . . . I . . . got the pregnancy test. And it was so positive. . . . And I cried for days."); *see also* Jane Doe, submitted by letter, July 28, 2006, at 367 (explaining that her 19-year-old daughter was having an abortion after being raped in her dorm room in January 2006). The Federal Abortion Ban contains no exception for women who have been raped.

[29] The women's stories consistently reveal that they weigh the decision to terminate seriously. *See also* Jenny, submitted by letter, June 28, 2006, at 317 ("It is a big decision and you need to weigh out our [sic] pros & cons and sometimes it takes a while.").

figure prominently into their decision-making process.[30] For others, the choice to have a second-trimester abortion reflects their desire to pursue an education to improve their futures and to have children if and when the time is right. The decisions of others are informed by strong considerations of family, including what the impact of another child will have on their already-existing children or on their ability to have children in the future.[31]

A. Women Consider Religious Values.

Many women appeal to their religious beliefs to help them decide what to do when considering a second-trimester abortion. Catherine, a 38-year-old woman, described her decision to terminate her pregnancy at "two days shy of 20 weeks gestation":

> This was not an easy decision for me or my husband, as to what to do next. . . . My husband is Catholic, albeit non-practicing, and really struggled with what to do. I have considered myself to be Pro Choice my entire life, but always felt like I would never be able to have an abortion myself. (Besides, I didn't think I'd ever even NEED to consider it.) . . .
>
> When I called to make the appointment I was told I could not get in for another week. Having

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[30] According to one study, in the general population, 43% of women who had abortions identified as Protestant, 27% identified as Catholic, and 8% as a member of another religion; 22% report no religious affiliation. Thirteen percent identify as "born-again" or evangelical. Rachel K. Jones, *et al.*, *Patterns in the Socioeconomic Characteristics of Women Obtaining Abortions in 2000-2001*, PERSP. ON SEX'L AND REPROD. HEALTH, Sept.-Oct. 2002, at 228.

[31] In the general population, 52% of women having an abortion intend to have children or more children in the future. *Id.* at 230. Six in ten women who have an abortion are already a parent. *See* Strauss, *supra* n.8, Table 12.

> to wait another week, knowing that the life I could feel moving inside of me – the baby that we conceived purposely and in love – was not going to be there much longer was agonizing to a degree I cannot describe. I prayed every night to God to please take my baby boy peacefully. When he wouldn't move for a few hours I hoped God had answered my prayers . . .

Catherine, submitted by e-mail, May 16, 2006, at 45-47 (emphasis in original).

Tina, a 32-year-old married woman with a healthy two-year-old son, learned at 23 weeks that her fetus was afflicted with Trisomy 18. She explained:

> God determined his fate not my husband and I. He was going to die no matter what. We may have ended his life sooner but it was to not see him suffer. We did extensive research on this condition and knew the odds were not in his favor. We also asked many questions before making the decision to abort. . . . Put yourself in my shoes and try to understand how it would feel to carry a baby full term with the knowledge that it may or may not be born alive and if it is born alive may live a few hours.

Tina, submitted by e-mail, June 7, 2006, at 89.

For Gina, religious beliefs influenced her decision to terminate her pregnancy and to request an intact procedure after a diagnosis of several fetal anomalies:

> As a Christian and a married woman who desperately wanted a child, I'd never given much though[t] to abortion. . . . We called our pastor, who told us there was no cut-and-dried answer and urged us to make whichever decision would bring our [in utero twin] daughters the most life. "Whatever you do," he said, "we'll support you." In fact, everyone – relatives, church members, colleagues – offered us their unconditional support

> throughout the entire process. "Nobody here has walked in your shoes," our pastor's wife told us, "and nobody here can judge you. . . . "
>
> Even as I [made] the appointment, I was still hoping God could save [the in utero twins]. But if he couldn't, I wanted to be able to hold them and say goodbye before I lost them forever.

Gina, submitted by e-mail, May 3, 2006, at 107-08.[32]

Jane Doe is from the Midwest and became pregnant after she was displaced from her home. She explained:

> The lord forgives us all + I pray to him daily. . . . I know God puts us through things for a reason + don't give us nothing he don't think we can handle but I can't do this one . . . We as women + parents do things for different reasons, I have a son that I been taking care of on my own + I can't afford another one right now. . . . The lord knows our decision + what we will do before we do it so I already feel like he forgave me because that's what he does, he's a forgiver – a healer, I call on him to help me get through this because I know he always listen. I rather have my kid in heaven than hell on earth because that [sic] what he/she will get if I was to have it.

Jane Doe, submitted by letter, July 7, 2006, at 314-15.

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[32] Gina recounts that she requested a D&X abortion so that she could hold her daughters intact after the procedure. *See* Gina, *supra*, at 108. Prior to the availability of D&X, women who wanted to obtain an intact fetus to hold or for genetic testing purposes would terminate by induction. Induction abortion simulates a labor delivery. It can take hours and, prior to 20 weeks gestation, presents comparatively greater risks to a woman's health than D&X. *See, e.g.*, *Stenberg*, 530 U.S. at 926.

B. Women Consider Self-Determination Values.

Many women who have second-trimester abortions value their ability to control when and if they will have children, even while most women do eventually become mothers. Angela submitted her account of obtaining an abortion when she was 19 years old:

> At the time of my abortion I did not have any children, and I was obviously not married. I am now married and have a daughter who will turn four in June. She is a joy and the feelings I had when I was pregnant with her were completely different considering my life circumstances and the fact I was having a baby that we both wanted. I can't say I was ready, or ever would have been, but I was comfortable and knew we would be ok. I was 23 when she was born, and am still married to her father. . . .
>
> I don't really think about "what if I had the baby?" And if the thought ever does cross my mind, it is full of gratitude for the doctor that provided the service to me.

Angela, submitted by e-mail, May 24, 2006, at 40.[33]

In particular, many women choose to terminate their pregnancies so that they may have children when they are financially and emotionally able to provide for them. One 17 year old reflected:

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[33] Many women expressed gratitude not only to their physicians, but also for their ability to obtain a safe abortion. *See, e.g.*, Jessica, submitted by e-mail, May 12, 2006, at 69-70 ("I can also tell you that I'm so very grateful that I had the choice to make when nature didn't do her job."); Plata, submitted by e-mail, May 25, 2006, at 82 ("I went to [another state] for termination and was glad to know that the procedure was safe, legal and done with the utmost professionalism."); Kim, telephone interview, June 17, 2006, at 143 ("I thank God that I have that freedom and that right to make the decision and for that to happen").

> I was approximately 22 weeks when I received the abortion procedure. At the age of 17 years old there was a small possibility that I would be able to support myself let alone the life of a needy child. Considering that I have very little experience with taking care of children, was also a reason for me getting the procedure. I would be a single parent so therefore I was not ready to take on that responsibility alone. The procedure didn't [a]ffect me in a harmful way, but it helped me maintain my life and be able to become someone. My decision was a huge help for my goals in life. I am now able to achieve my goals and look forward to a beautiful future. Maybe one day I will be able to have a child and have no doubts about being able to support it.

Jane Doe, submitted by letter, June 12, 2006, at 14.

For many of the younger women who shared their stories, the ability to pursue an education and shape their future figured largely into their decisions. Laura was a 19-year-old honors student on the West Coast when she had a second-trimester abortion:

> I knew in my heart that abortion was my only realistic choice. . . . [A]fter working so hard to get into [college] and setting myself for what I hoped would be a long, fulfilling, successful career, I could not accept the idea of putting it all on hold to have a child, most likely alone, and possibly without parental support. . . .
>
> I also wonder, at times, what my parents would have thought. I got my answer years after my abortion, when my best friend became pregnant and decided to forgo medical school in order to have a baby. My mother – a devout, conservative Christian – told me, in hushed tones, should I ever find myself pregnant she would personally take me to get an abortion. She said my future was too important. I was shocked to hear it – given her beliefs

> and politics – but also somewhat relieved and reassured. In her own way, she understood that the right to choose abortion was central to any woman's ability to live a full life.

Laura, submitted by e-mail, May 8, 2006, at 119-20.[34]

Another young woman explained "I'm leaving for the Army in August. I'm already signed up, I'm ready to [g]o and I want to go and it's like that [the pregnancy] is going to prevent me from going." Jamie, on-site clinic interview, June 1, 2006, at 210.

C. Women Consider Family Values.

Many of the women choose to terminate their pregnancies because of their strong commitment to their families. For example, many women consider the financial and emotional toll another child would have on their ability to provide for themselves and their children. Kourtney, a 35-year-old woman and single mother who lives in the Northeast, described:

> I was raised in a very conservative [C]hristian home in which I was taught at age five that abortion was murder. I was taken to protests and rallies throughout my entire childhood. . . .
>
> I never thought I would be a single mom but here I was alone, thousands of miles away from my family. . . . I have a masters level education and a professional job. Even with a good job and an education, after paying for child care ($17,000 per year), health insurance ($5,200 per year) I have only $400 per week on which to support my three children and myself. . . .

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[34] In her e-mail, Laura indicates that she had an abortion in October 1994.

> I was lucky to get the children in bed every night by 9 so that I could do the dishes, laundry, vaccuum [sic], pay the bills, etc. Physically and emotionally I had nothing to give to myself and I knew what I had for my children was not enough. How could I possibly manage another child? . . . I prayed, I cried, I begged, and I screamed every night. . . .
>
> I decided to take the chance that I would survive and that my three children would have their mother to raise them, rather than having four children with a mother who was destined to be in a mental hospital.

Kourtney, submitted by e-mail, May 17, 2006, at 73-74.

Lucinda from the Midwest is a 29-year-old mother who explained her decision to have an abortion:

> Due to being in a relationship over the past 5 yrs. which has turned abusive the last year. And being hit in the stomach at 8 wks. pregnant. I made the choice that it [sic] best for the future of myself and my 10 yr. old and the mental and physical well being of my baby that I wait until a later date to bring another life into this already confusing world. . . . I prayed and felt that this was the best choice for everybody.

Lucinda, submitted by letter, June 16, 2006, at 320.

Christine, a 21-year-old woman from the Northwest, considered not only her two-year-old, but also her parents after her boyfriend abandoned her 14 weeks into her pregnancy:

> I knew that having this baby would take a lot of what i [sic] could give to my daughter away. I would not be able to get my own place in time to have this child and I knew that I would have to take care of him and my almost 2 year old in one bedroom. This is not something that I wanted for

> the daughter that I already had nor was it something that I wanted for a newborn baby. I knew that I would have to rely on my parents who are practically in their fifties, that still work their butt's [sic] off everyday to take financial responsibility for my children. This is not what I wanted for my parents either. . . . I want to be able to stand on my own two feet. . . . I didn't want to sole[l]y rely on the feet of others. I knew that having this baby would not enable me to do those things in time for this child to be born. I don't think it would be fair to either one of my children (born and unborn) to do that to them.

Christine, submitted by e-mail, May 25, 2006, at 56.

CONCLUSION

The stories of individual women provide the Court with a window into why women obtain second-trimester abortions. For individual women who face the decision regarding a second-trimester abortion, their ability to obtain safe abortions is fundamental to their lives. In making this decision, these women rely upon intimate moral, religious, and personal values to make the right decision for themselves and their families. This is the essence of a woman's right to privacy and liberty, and *Amici* ask this Court to hold the Federal Abortion Ban unconstitutional and affirm the decisions of the Eighth and Ninth Circuits.

Dated: September 20, 2006

Respectfully submitted,

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APPENDIX OF *AMICI CURIAE*

I. The Institute for Reproductive Health Access

The Institute for Reproductive Health Access works through research, education and advocacy to increase access to comprehensive reproductive health services, reduce unintended pregnancy, and protect the constitutional right of women to make private health decisions that affect them and their families. The Institute partners with state-based organizations throughout the United States to remove the obstacles women face when seeking to obtain family planning and abortion care, as well as other reproductive health services.

II. ABORTION CLINICS

Allegheny Reproductive Health Center (PA)

Allegheny Reproductive Health Center, located in Pittsburgh, PA, provides reproductive health care to women and men from Pennsylvania, Ohio, West Virginia, and Maryland. Founded in 1975, Allegheny Reproductive provides contraception, abortion services, gynecological care, patient education and related counseling. For more than thirty years, we have heard the stories from the hearts of the patients we serve who are making moral choices for their families' well-being.

Allentown Women's Center (PA)

The Allentown Women's Center (AWC) is an independent provider of abortion and reproductive health care services in Northeast Pennsylvania. Founded in 1978, AWC has provided vital health care services to over a hundred thousand women between the ages of eleven and

sixty. AWC serves numerous counties within a 50-100 mile radius of Allentown, in both Pennsylvania and New Jersey. AWC supports and respects the right of every woman to make her own decisions regarding her reproductive health care and sexuality. Through education, outreach, and counseling support, AWC aspires to help create an environment where women will not be judged and harassed for their choices, but praised for their strength and courage.

Atlanta Women's Medical Center (GA)

For over thirty years, the Atlanta Women's Medical Center has set a standard for excellence in first and second trimester abortion care for the women of Georgia and beyond. We are an accredited member of the National Abortion Federation and the National Coalition of Abortion Providers. Our community depends on us to provide them with the safest care available, and that we will serve them to the best of our ability. A woman's ability to determine the best course of action is essential to providing safe and excellent care, and this ability must be preserved.

Aurora Medical Services (WA)

Aurora Medical Services is a private women's reproductive health clinic, providing medical and surgical first trimester abortions, surgical second trimester abortions, donor insemination, birth control methods, STD testing and treatment, and well-woman care. We believe that each individual woman is the person best qualified to decide when, where, how, and whether or not she should bear children.

Buffalo Women's Services, LLC (NY)

Buffalo Women's Services, LLC has been providing quality abortion care to thousands of women since 1983. We provide abortion services from four weeks to twenty weeks, and see women from Western New York, Ohio, and Pennsylvania. We also do termination for fetal indications up to twenty-two weeks. We also provide routine gynecology and birth control. We are a member of the National Abortion Federation and are active in the political arena, fighting for reproductive rights for all women.

Camelback Family Planning (AZ)

Camelback Family Planning, located in Phoenix, Arizona, provides reproductive health services to women and men throughout the Southwest. Since opening in 1999, CFP has provided contraception, abortion care, and general gynecological care, and every day we hear our patients' stories about their families. The outcome of these cases will impact our services.

Cedar River Clinics –
Feminist Women's Health Center (WA)

To achieve reproductive freedom and justice for women, Feminist Women's Health Center operates Cedar River Clinics which provides first and second trimester abortion in Renton, Tacoma, and Yakima in Washington State. We are one of the few clinics providing out-patient terminations for women with severe fetal anomalies or risks to the women's health. Annually we serve over 7,000 women for a range of gynecological services. We are a social justice organization that combines direct health care with community education and activism to assure all

women have the right to determine their reproductive destinies. We have a vision of a world where all women freely make their own decisions regarding their bodies, reproduction, and sexuality – a world where women can fulfill their own unique potential and live healthy, whole lives.

Cherry Hill Women's Center (NJ)

The Cherry Hill Women's Center is a state-licensed Ambulatory Surgery Center specializing in first and second trimester abortion care. We are an accredited member of the National Abortion Federation and the National Coalition of Abortion Providers. Since 1978, our mission has been to exceed expectations in women's health care and set the standard for dignified, confidential reproductive health services. We strive to treat each woman as a whole person, addressing her physical and emotional needs so that she can make informed health care decisions, and we work to educate our community about the importance of comprehensive reproductive health care in order to increase understanding of the complexity of reproductive health care decisions. We feel it is essential for the voices of women who seek and desperately need our services to be heard.

Concord Feminist Health Center (NH)

Concord Feminist Health Center (CFHC), a nonprofit women's health clinic located in Concord, New Hampshire, provides comprehensive gynecological care and abortion services to women in New Hampshire and the New England region. CFHC was founded in 1974 on the belief that women understand their bodies and make intelligent

health choices when they are provided with accurate information, understanding, and support. Additionally, CFHC takes an active role in community and national politics; we are continually involved in the ongoing struggle to preserve and expand women's rights.

Crist Clinic for Women (NC)

Founded in 1973, the Crist Clinic for Women is an OB/GYN clinic with eighteen professionals that provide full women's services and support women's rights and reproductive freedom – "All women have a RIGHT to determine their own destiny." The clinic has five OB/GYNs, a Nurse Practitioner, a Midwife, and several ancillary staff support – all proud to be included as amicus.

Curtis Boyd, M.D., P.C. (NM)

Curtis Boyd, M.D., PC has been providing abortion services in New Mexico since 1972. The clinic specializes in pain management, offering individual counseling to each patient. The clinic is a member of the National Abortion Federation and provides high quality, low cost services through the second trimester for women throughout the Southwest.

Family Planning Associates (IL)

Family Planning Associates Medical Group is a women's healthcare provider with three locations in the greater Chicago area. We have been a member of the community for over eighteen years, and we're the largest provider of second trimester abortions in the Midwest. We

are also a member, in good standing, of the National Abortion Federation. We are committed to a wide range of women's issues, primarily focusing on women's reproductive rights. Women of all ages, races, and circumstances seek our services.

Family Planning Association of Maine (ME)

The Family Planning Association of Maine is a statewide nonprofit organization whose mission is to meet the full-range of clinical and educational reproductive health needs of low-income women and teens living in Maine. Founded in 1974, the Association has been the state's Title X/National Family Planning grantee for the last thirty-two years, and for the last fifteen years has successfully competed for all state funds dedicated to serving the reproductive health needs of Maine women and teens. Additionally, the Association offers abortion services in two health sites and is home to a training facility in northern New England for physicians and family practice and OB residents interested in learning how to provide abortion services.

Fayetteville Women's Clinic (AR)

Located in Fayetteville, Arkansas, the Fayetteville Women's Clinic has been providing reproductive health care since 1979. The Fayetteville Women's Clinic has provided most of the elective abortion care in northwest Arkansas since 1984 when it became the sole clinic outside of Little Rock openly willing to provide this vitally important service. The Fayetteville Women's Clinic provides surgical abortions from the time pregnancy has been diagnosed and the abortion decision made to 18 weeks,

and medical abortions to 9 weeks after the last menstrual period with certain restrictions.

Hartford Gyn Center (CT)

Hartford Gyn Center is a member of the National Coalition of Abortion Providers and the National Abortion Federation. We have been providing abortion services to the women of New England since 1981, and have great interest in these cases, as the decisions will either uphold or erode women's access to reproductive freedom. It is our opinion that the decision to terminate a pregnancy should only be made by the woman and anyone she may choose to include in her decision, such as a parent, a partner, or a member of the clergy.

Hillcrest Clinic – Baltimore (MD)

The Hillcrest Clinic was established in 1973, and every day in our thirty-three years of existence we have seen the need for safe, legal abortion services. Our doctors, nurses, counselors, and support staff provide an atmosphere of understanding and respect to women who are dealing with unwanted pregnancies as well as many other problems. Our main objective is to provide women with quality medical care and professional counseling in an atmosphere of confidentiality and respect, at an affordable cost.

Hope Clinic for Women, LTD (IL)

The Hope Clinic for Women, LTD opened its doors in 1974 and is a state licensed Ambulatory Surgical Treatment Center (ASTC) that specializes in abortion care. We

were one of the first clinics in Illinois to offer procedures past the first trimester because the owner and then medical director of the clinic recognized the need. Our services include a full range of abortion care as well as birth control education, counseling, a speaker's bureau, and written educational materials. Though our tax status is for-profit, our goal is to never deny a woman the services she needs due to lack of financial resources.

Memphis Center for Reproductive Health (TN)

The Memphis Center for Reproductive Health (MCRH) is a 501c3 nonprofit women's reproductive health center licensed as an ambulatory surgical treatment center through the state of Tennessee, with a clinic located in Memphis, Tennessee. Founded in 1974, MCRH provides gynecological exams, testing for sexually transmitted infections, and abortion care services for women from more than five states including Tennessee, Missouri, Mississippi, Arkansas, Alabama, and Kentucky. MCRH also provides ongoing education through community outreach in west Tennessee, east Arkansas, and north Mississippi.

Mildred S. Hanson, M.D. (MN)

Mildred S. Hanson, M.D., is a gynecologist practicing in south Minneapolis. She was the first physician in Minnesota to offer second-trimester D&E procedures. She also provides medical abortions using Methotrexate and oral prostaglandin for very early terminations on request.

Mile High OB/GYN Associates, P.C. (CO)

Mile High OB/GYN is a five-physician OB/GYN practice established more than fifty years ago in Denver, Colorado. We support the reproductive rights of all women, and we provide the totality of OB/GYN services, including second trimester termination. We are associated with a genetics clinic and have helped many women with fetal anomalies, lethal anomalies, and chromosomal abnormalities.

Northeast Women's Center (PA)

Founded in 1973, the Northeast Women's Center was the first free-standing abortion provider in Pennsylvania, and has been an integral part of the community since that time. We are an accredited member of the National Abortion Federation and the National Coalition of Abortion Providers, and provide first and second trimester abortion care in a safe and dignified manner.

Northland Family Planning (MI)

Northland Family Planning Centers are three centers founded in 1976 that provide reproductive health care services including abortion care up to twenty-four weeks. We serve women who need abortion care in the city of Detroit, Michigan, as well as a three-county area surrounding Detroit.

Philadelphia Women's Center (PA)

Philadelphia Women's Center has been specializing in first and second trimester abortion care and women's health care services since 1972. As a progressive leader in

the community, we strive to meet and exceed the changing needs of our patients. As members of the National Abortion Federation and the National Coalition of Abortion Providers, we understand the issue of reproductive rights as it plays out on both a national and local level. At Philadelphia Women's Center, we strive to treat each woman as a whole person, addressing the physical and emotional needs so that she can make meaningful, informed healthcare decisions. Reproductive healthcare decisions are exceedingly complex, and talking with our patients each day teaches us that no two women come to a decision about abortion in the same way. As abortion providers, we are concerned about not only the quality of care women in our community receive, but access to this care as well.

Preterm (OH)

With more than 30 years experience, Preterm of Cleveland, Ohio, offers both surgical and medication abortion services as well as free pregnancy testing and emergency contraception. Preterm provides surgical abortion care from 4 through 20 weeks of pregnancy, and medication abortion from 4 through 8 weeks. Preterm's Fetal Anomaly Program offers specialized services for families experiencing the profound grief of having to undergo a pregnancy termination due to a fetal abnormality.

Reproductive Health and Counseling Center (PA)

The Reproductive Health and Counseling Center (RHCC), located in Chester, Pennsylvania, exists to provide high quality, comprehensive reproductive health care for well women and men. When the Supreme Court

decided in 1973 that the choice of terminating a pregnancy was between a woman and her doctor, RHCC began providing pregnancy testing, first and mid-trimester abortion services, counseling services, contraceptive care, and routine gynecological care. An important part of our service to women from our area is second-trimester abortion services, which leads us to support this brief as amicus.

Scotsdale Women's Center (MI)

Scotsdale Women's Center (SWC) was founded in 1973 in Detroit, Michigan. For thirty-three years we have offered pregnancy termination, ob/gyn care, family planning, and counseling for our mostly inner-city patients. SWC is run by women who are active in the pro-choice community, striving to protect reproductive rights and freedom. Our Director has been a member of MARAL (Michigan Abortion Rights Action League) since 1975. Since the founding of SWC, our counselors have discussed with our patients the difficult decisions they have chosen to make.

Seattle Medical & Wellness Clinic (WA)

The Seattle Medical & Wellness Clinic is a private physician-owned clinic established in 1985. The clinic provides a range of services including abortions up to nineteen weeks. We serve the military and student populations of Western Washington State, but we also have patients from as far away as Alaska, Saskatchewan, California, and Idaho. Our mission is to provide the most competent and supportive care for women who choose abortion.

Southern Tier Women's Services, Inc. (NY)

As a health care facility that provides first trimester abortions, we are interested in this case because we see first hand how much women need our services. Many women have a difficult time raising money, arranging time off from work, arranging childcare, transportation, etc., thus delaying them to a second trimester procedure. It is our experience that women take the responsibility of childbearing very seriously, and that this is the main issue for them – providing for a child.

West Alabama Women's Center (AL)

West Alabama Women's Center located in Tuscaloosa, Alabama, provides reproductive health care to women from Alabama, Florida, Mississippi, and Georgia. We consider the availability of abortion services an essential means of assuring that children will be planned, loved, and cared for. Therefore, one of our goals is to preserve and assure access to safe, legal abortion services for all women. Every woman's body is different and so is every woman's life.

Westside Women's Medical Pavilion (NY)

Westside Women's Medical Pavilion, founded in 1996, offers a wide range of health care for women, including reproductive health care. While we are located in the Northeast, patients are referred to us from a wider area. Additionally, through our affiliations with nearby hospitals, we participate in the education of young physicians in the area of female reproductive health care.

Whole Woman's Health (TX & MD)

- Austin
- Baltimore
- Beaumont
- McAllen
- San Marcos

Whole Woman's Health is a patient-centered women's healthcare practice, where the focus is on the whole woman – her head, her heart, and her body. We believe that all health care, especially women's health and abortion services, can better serve our community through a holistic approach. We explain medical procedures and share their results, and we also pay attention to how our patients feel, because we have all been patients before, and we understand the fear and anxiety often experienced in medical settings.

Women's Health Project, Inc., d/b/a Emma Goldman Clinic (IA)

The Women's Health Project, Inc. is a reproductive health care organization located in Iowa City, Iowa, serving clients from throughout the Midwest since 1973. The services provided include gynecology, abortion, walk-in, and massage, as well as health care education and political advocacy on issues related to our mission.

Women's Health Services (MA)

Women's Health Services provides second trimester procedures up to twenty-three weeks. Our population includes females between the ages of twelve and forty-seven, from every economic and ethnic group. Approximately forty percent of our patients are women who have

pregnancies with chromosomal abnormalities, congenital defects, or fetal demises that have not been diagnosed until after thirteen weeks. And every patient meets with a counselor to discuss all available options at a time that is very emotionally difficult.

Women's Health Specialists of Northern California (CA)

Women's Health Specialists is a living symbol of women's freedom and self-determination. Founded in 1975 by nine women as the Feminist Women's Health Center in Chico, California, Women's Health Specialists was established to advocate, promote and protect reproductive rights for all women. Our philosophy is that sharing information is the key to giving women control over their own gynecological health and reproductive choices. We believe all women have the right to choose when, if, and under what circumstances they will have children. Long-term social change is our priority, and our challenge, and we have expanded the meaning of women's health to its natural outcome: human rights. We are pioneers in the women's health movement; we created women-centered health care and developed and promoted safer medical techniques that have raised the standard of care in the United States, and we currently provide a full range of health care services, including birth control and abortion services in California.

III. Additional Organizations

Asian Communities for Reproductive Justice

Asian Communities for Reproductive Justice is a non-profit social, political, and economic justice organization in

Oakland, California, working for the liberation of Asian women and girls through the lens of reproductive justice. ACRJ promotes and protects reproductive justice through organizing, building leadership capacity, developing alliances, and education, to achieve community and systematic change.

Backline

Founded in 2004 and based in Portland, Oregon, Backline is a nonprofit organization dedicated to conversation around all aspects of pregnancy, parenting, abortion, and adoption. Through our nationwide talk-line, we speak to women and their loved ones every day who are making individual choices around these issues. We understand the uniqueness of every woman's story while recognizing the universality of the pregnancy experience.

Family Planning Advocates of New York State, Inc.

Family Planning Advocates of New York State (FPA) was founded in 1977 to ensure women's access to reproductive health care. FPA strives to advance public policies that fulfill the rights of individuals to comprehensive sexual and reproductive health services and education that is consistent with principles of justice and fairness, while respecting diversity, personal dignity, and privacy.

Feminist Majority Foundation

The Feminist Majority Foundation (the Foundation) is a nonprofit organization with offices in Arlington, Virginia, and Los Angeles, California. Dedicated to eliminating sex

discrimination and to the promotion of equality, women's rights, and safe access to abortion and birth control, the Foundation actively pursues legal protection for reproductive health services, and regularly works with 587 women's health care clinics and abortion providers across the country. The Foundation has led legal and advocacy efforts to maintain access to abortion and reproductive health care services in the face of unnecessary regulations and restrictive legislations, and intimidation and violence by anti-abortion extremists.

Hawaii State Coalition Against Domestic Violence

The Hawaii State Coalition Against Domestic Violence (HSCADV) was founded in 1980. Our mission is to ensure the safety and protection of women in intimate relationships by coordinating domestic violence prevention and intervention services, affecting public policy, and establishing coordinated and consistent procedures and actions by the civil and criminal justice systems in Hawaii. In keeping with our overriding goal of empowering women, the HSCADV supports a woman's right to reproductive freedom under all circumstances.

Iowa Coalition Against Sexual Assault

The Iowa Coalition Against Sexual Assault (CASA) is a membership organization of Iowa's twenty eight sexual assault crisis centers. Iowa CASA unites people and organization to promote a society free from sexual violence and to meet the diverse needs of survivors of sexual assault. Our experience assisting rape survivors for nearly twenty-five years confirms that women and girls do

become pregnant and do choose to terminate those pregnancies that result from rape and incest. We support the right of those survivors of sexual assault to choose the option that they determine to be in the best interest of themselves and their families.

Ipas

Ipas is an international nonprofit organization that has worked for three decades to increase women's ability to exercise their sexual and reproductive rights, and to reduce deaths and injuries of women from unsafe abortion. Ipas's global and country programs include training, research, advocacy, distribution of equipment and supplies for reproductive health care, and information dissemination.

Judicial Consent for Minors Lawyer Referral Panel

The Judicial Consent for Minors Lawyer Referral Panel (the Panel) is an association of Massachusetts attorneys who represent minors seeking judicial consent for an abortion under Massachusetts law. The Panel was created in 1981 by members of the Women's Bar Association of Massachusetts and the National Lawyers Guild, Massachusetts Chapter. The Panel is run by a Steering committee which has trained hundreds of attorneys in Massachusetts to represent young women in judicial bypass proceedings, as well as organizing and participating in trainings in many other states. They have also offered technical assistance to court systems implementing such laws, testified on the implementation of such laws in legislatures across the country and as expert witnesses in

litigation involving such laws, participated in research and written law review articles on the issue. Over the past twenty-five years, Steering Committee members collectively have represented thousands of young women.

National Latina Institute for Reproductive Health

The mission of the National Latina Institute for Reproductive Health (NLIRH) is to ensure the fundamental human right to reproductive health care for Latinas, their families, and their communities. Through advocacy, community mobilization, and public education, NLIRH is shaping public policy, cultivating new Latina leadership, and broadening the reproductive health and rights movement to reflect the unique needs of Latinas.

National Network of Abortion Funds

The National Network of Abortion Funds (NNAF) is a nonprofit reproductive rights organization with offices in Boston, Massachusetts. Founded in 1993, NNAF is an affiliation of 110 grassroots abortion funds located in forty-two states and the District of Columbia. NNAF's mission is to 1) promote direct financial support for abortions to low-income women and girls nationwide; and 2) conduct grassroots and national organizing, advocacy, public education, and policy work to ensure that those most in need – low-income women, women of color, and young women – have access to abortion and other reproductive health care.

Pennsylvania Coalition Against Domestic Violence

Pennsylvania Coalition Against Domestic Violence, Inc. (PCADV) is a not-for-profit organization incorporated in the Commonwealth of Pennsylvania for the purpose of providing services and advocacy on behalf of victims of domestic violence and their minor children. PCADV is a membership organization of sixty-two shelters, hotlines, counseling programs, safe home networks, legal advocacy projects, and transitional housing projects for battered women and their dependent children in the Commonwealth. For thirty years, PCADV has provided training and technical assistance to domestic violence programs, attorneys, the courts, and law enforcement agencies on issues of domestic violence.

ProKanDo

ProKanDo is a pro-choice, pro-woman organization based in the state of Kansas. ProKanDo works to identify, educate, and motivate pro-choice voters. ProKanDo lobbies the state legislature in support of bills that protect the reproductive rights of women, while working to defeat any harmful legislation that would turn back the clock on women's rights.

SisterSong Women of Color Reproductive Health Collective

SisterSong is a national network of seventy-six women of color and allied organizations that sustains, organizes, and mobilizes women of color working together on reproductive justice issues in the U.S.

Women's Bar Association of Massachusetts

The Women's Bar Association of Massachusetts (WBA) is a professional association of over 1,200 attorneys, judges, and elected officials dedicated to advancing and protecting the interests of women and children in society and in the practice of law. The WBA has been active in advocating for women and girls on reproductive issues for over twenty-five years, and has submitted amicus briefs in both federal and state matters involving reproductive choice and abortion.

Women Lawyers Association of Los Angeles (WLALA)

Women Lawyers Association of Los Angeles (WLALA) is a nonprofit organization comprised primarily of attorneys and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. WLALA places a high priority on preserving personal choice in abortion decisions.

Women's Health and Family Planning Association of Texas

The Women's Health and Family Planning Association of Texas (WHFPT) is a professional association and nonprofit organization whose mission is to advocate for access to affordable, confidential, and high-quality family planning and reproductive health care for all Texas women and their families. WHFPT works to ensure that family planning

services are funded through public sources; that reproductive freedoms are protected; that sexuality education is medically accurate, age appropriate, and complete (and includes information about contraceptives); and that laws, rules, and regulations do not limit access to needed and desired reproductive health care and family planning services. WHFPT's members include health departments, medical schools, Planned Parenthood affiliates, community action agencies, hospitals and hospital districts, community health centers, other nonprofit clinics, and interested and committed individuals.

Women's Reproductive Rights Assistance Project

The Women's Reproductive Rights Assistance Project is a nonprofit organization dedicated to funding low-income women and teens in need of abortion services or emergency contraception. We are a national fund and have been assisting women since 1991. Our services are provided free to the clinics on behalf of the women; all of the women we assist would be without their reproductive rights if we did not exist. Access to an abortion or emergency contraception depends on the ability to pay for the services, and without our help, many women would be forced to bring unplanned and unwanted pregnancies to term.

WV FREE (WV Focus: Reproductive Education and Equality)

WV FREE was founded in 1989 with a mission to protect the right to choose, increase accessibility to affordable birth control and prenatal care, and improve education on

reproductive choices. Because we value women's health and women's lives, we view access to reproductive health care as a basic human right. WV FREE provides legislative advocacy on women's reproductive health concerns, conducts public education campaigns on family planning issues, and works to address the abortion provider shortage in West Virginia. To reduce the high rate of unintended pregnancies and the often-resultant need for abortion services, we are currently engaged in cutting-edge emergency contraception access work.